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U. S. DEPARTMENT OF JUSTICE

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No. 984

In the Supreme Court of the United States

OCTOBER TERM, 1922

THOMAS HAMMER-SCHMIDT ET AL., PETITIONERS,

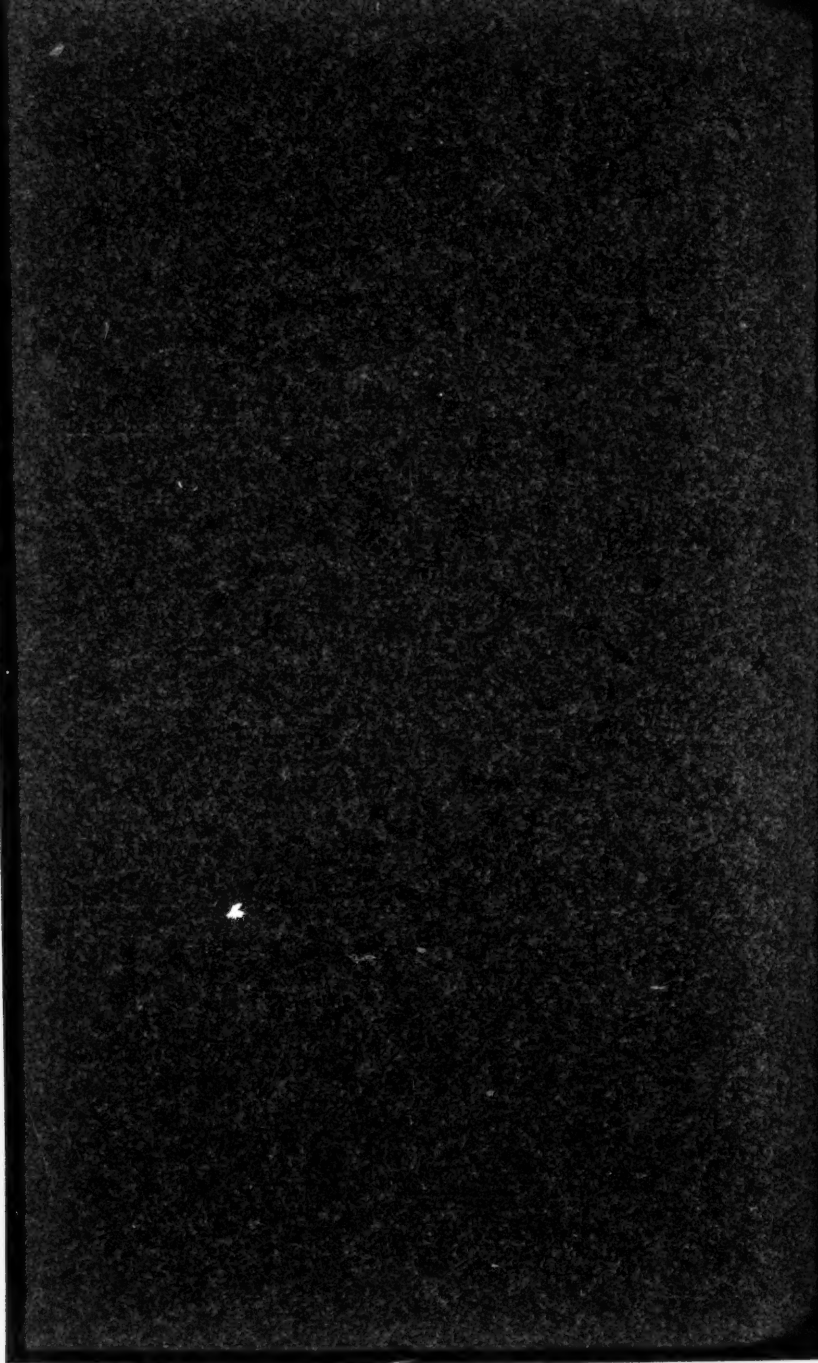
v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF HABEAS CORPUS TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

WASHINGTON: GOVERNMENT PRINTING OFFICE: 1923



# In the Supreme Court of the United States

OCTOBER TERM, 1922.

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THOMAS HAMMERSCHMIDT ET AL.,

petitioners,

v.

UNITED STATES OF AMERICA.

} No. 924.

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*PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.*

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**BRIEF FOR THE UNITED STATES IN OPPOSITION.**

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## STATEMENT.

Petitioners were convicted under an indictment charging them with conspiring to defraud the United States through obstructing and defeating the function of the Government in securing registration of persons eligible to military duty. The Circuit Court of Appeals, in an opinion that needs no elaboration here, affirmed the judgment of conviction. One of the judges of that court, however, dissented upon the ground now made the basis of the petition for certiorari here under discussion, viz, that the acts of petitioners could not defraud the United States.

The majority opinion seems to satisfactorily dispose of the question, and we need here only point out what we conceive to be the error in the dissenting opinion. That opinion states that the following is the question in the case:

Thus the question is "Does one who stands upon his supposed right to refuse to obey an unconstitutional law thereby 'defraud' the United States, if it turns out that the law was valid?"

The question on the record here before the court is not so narrow. The real question is whether a conspiracy organized for the express purpose of depriving the Government, through the distribution of circulars and other literature containing gross misstatements of fact, of the service of those upon the country must rely in the hour of national peril does not, if consummated, thereby defraud the United States in the broad sense in which the term defraud is used in Section 37 of the Criminal Code. There seems to be no escape from the controlling effect here of the decision of this court in *Haas v. Henkel*, 216 U. S. 462, 477-478. Directly in point is *United States v. Galleanni*, 245 Fed. 977. See also *Horman v. United States*, 116 Fed. 350; certiorari denied, 187 U. S. 641.

Two trial and two appellate court judges have upheld the judgment of conviction in this case, and the reasons advanced in the single dissenting opinion do not make out a case deserving of review on certiorari.

It is, therefore, respectfully submitted that the petition should be denied.

JAMES M. BECK,

*Solicitor General.*

JOHN W. H. CRIM,

*Assistant Attorney General.*

HARRY S. RIDGELY,

*Attorney.*

APRIL, 1923.

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